



L-6

Probate

Estate And IHT

Abbreviations

PR – Personal representative

Tes – Testatrix

T – Trustee

B – Beneficiary

TA 2000 – Trustee Act 2000

WA 1837 – Wills Act 1837

MWPA 1882 - Married Women's Property Act 1882

CP – Civil partner

AEA 1925 – Administration of Estates Act 1925

IHTA 1984 – Inheritance Tax Act 1984

TCGA 1992 – Taxation of Chargeable Gains Act 1992

I(PFD)A 1975 - Inheritance (Provision for Family and Dependants) Act 1975

NCPR – Non-Contentious Probate Rules

PET – Potentially Exempt Transfers

LCT – Lifetime Chargeable Transfer

NRB – Nil Rate Band

LT – Lifetime Transfer

IHT – Inheritance Tax

CGT – Capital Gain Tax

Estate

IHT

Outside of the estate

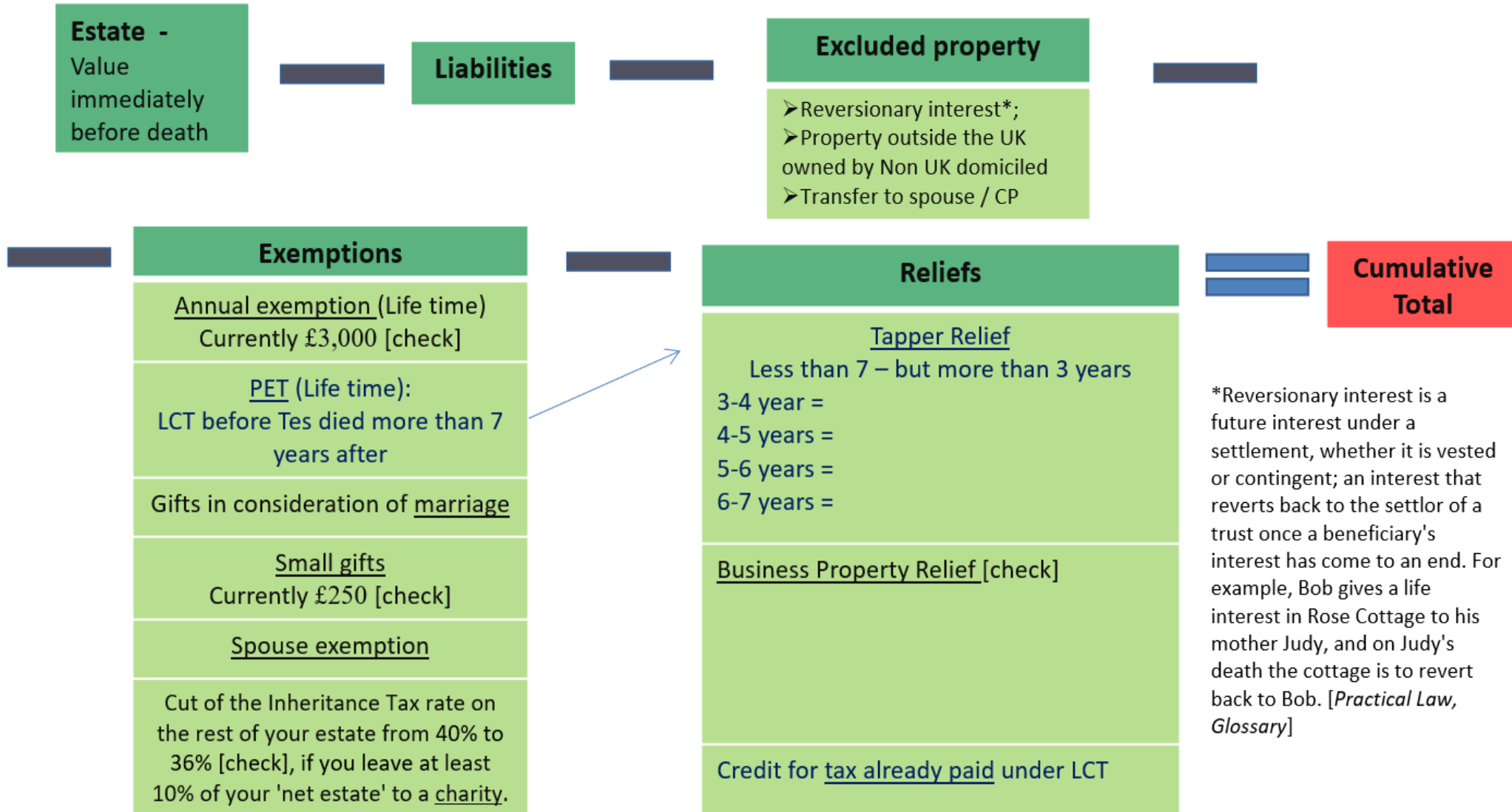
Payment of debts

Distribution of the estate

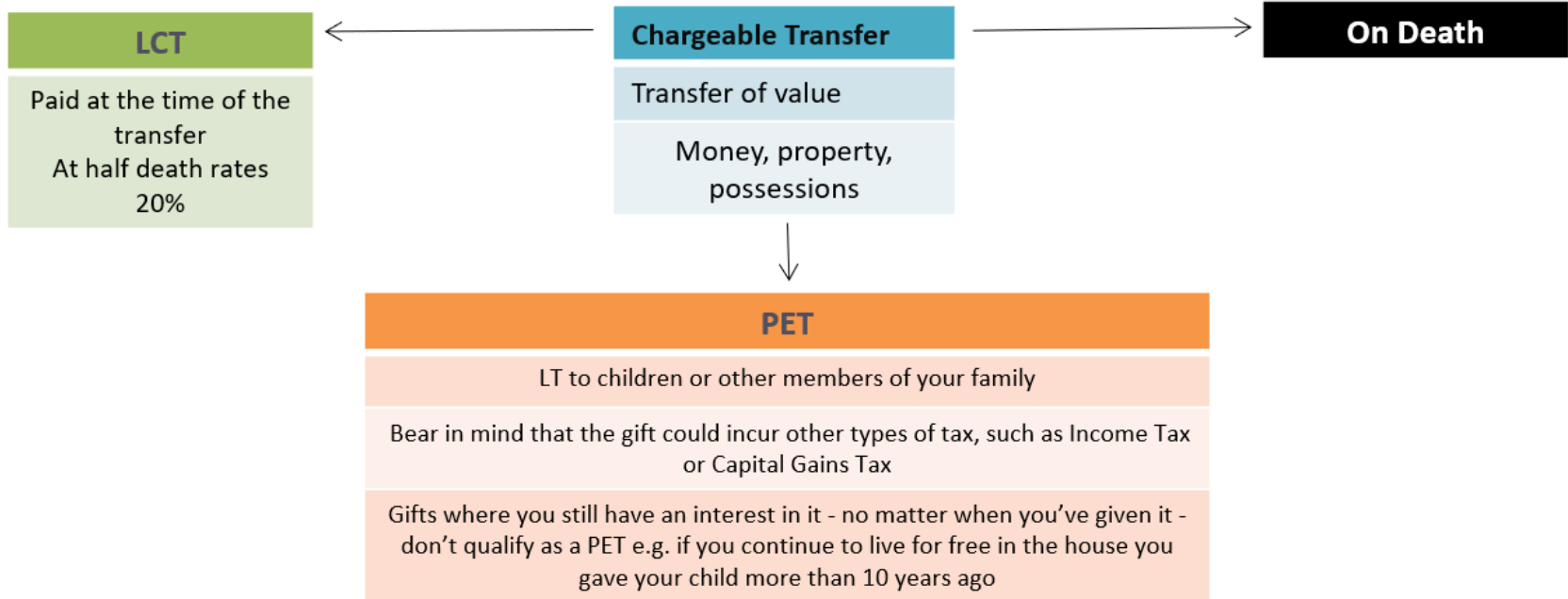
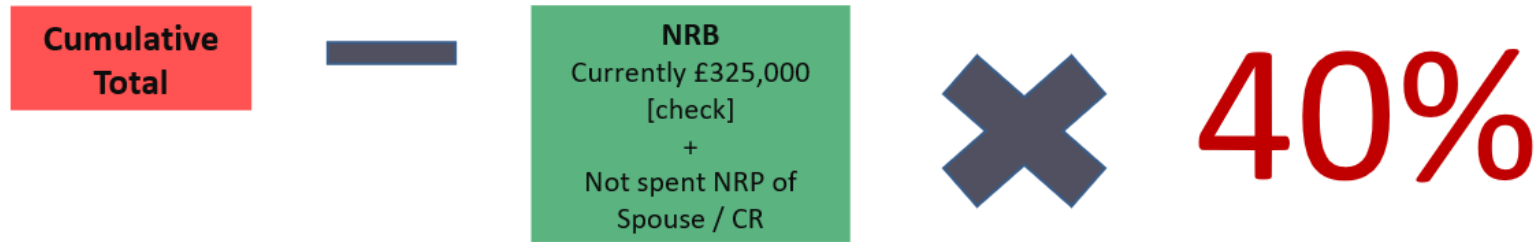


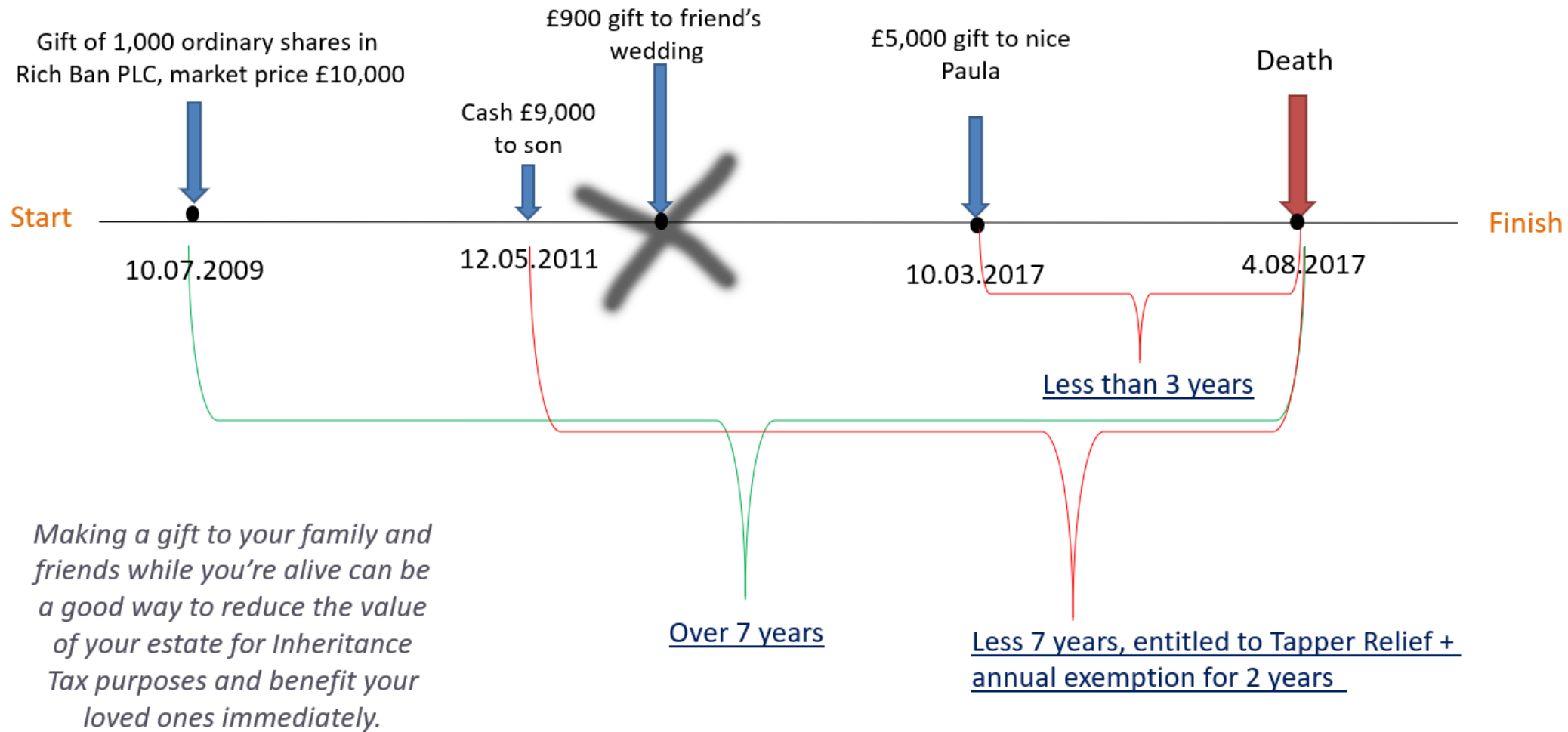
1. IHT

CGT – not charged on death, but may be charged on further transfers



*Reversionary interest is a future interest under a settlement, whether it is vested or contingent; an interest that reverts back to the settlor of a trust once a beneficiary's interest has come to an end. For example, Bob gives a life interest in Rose Cottage to his mother Judy, and on Judy's death the cottage is to revert back to Bob. [Practical Law, Glossary]





Sample from
Foundations for the LPC

92 Inheritance tax

the gift was made, 2010/11, is available, as is the annual exemption for the preceding tax year, 2009/10. However, Step 3: as the building was used for the purpose of the business carried out by the partnership of which Jonathon was a partner, the building qualifies for **BPR at 50 per cent** (7.5.3.2). **The BPR is given before deducting the annual exemptions** (7.5.3), leaving a value transferred of **£44,000**. Step 4: Jonathon's cumulative total on 2 June 2010 was £338,000 (£123,000 + £215,000). There is **no NRB** remaining and the whole £44,000 will be taxed at 40 per cent, making IHT of **£17,600**. Step 6: as the gift was made within two to three years of Jonathon's death there is **no taper relief**. Step 7 is not applicable as the **transfer was a PET when originally made** and so there will have been no IHT paid at the time of the gift.

The liability to IHT on the estate remains to be calculated.

Step 1: the value of the estate is the value of Jonathon's share in the **house**, which, as it was jointly owned, will have the **joint owner's discount** applied, giving a value of **£45,000 – (10 per cent of £45,000) = £40,500**. The remainder of the estate was valued at £200,000. The **value of the estate** is £240,500.

Step 2: there is one **exemption**, **the gift to the charity of £10,000 is exempt**, reducing the value transferred to £230,500.

Step 3: the **interest in a partnership qualifies for BPR at 100 per cent**, reducing the value of the estate to **£130,500**.

Step 4: the total value for IHT purposes of each of the chargeable transfers made in the seven years preceding the date of death will form Jonathon's **cumulative total**. **At the date of his death** this total is **£382,000 (£123,000 + £215,000 + £44,000)**.

Step 5: all Jonathon's **NRB has been used**; all the estate, **£130,500**, will be taxed at **40 per cent**, giving IHT of **£52,200** to pay.

The **IHT due on the gift made on 10 November 2007 to the discretionary settlement, £2,080**, is payable **by the trustees** of the settlement, out of the trust monies.

The **IHT due on the gift made on 2 June 2010 to Andrew, £17,600**, is payable **by Andrew**.

The **IHT due on the estate, £52,200**, is payable by Jonathon's **personal representatives** from the monies in his estate.

2. Outside of the estate

Property	Description
Jointly Owned Property	House, joint bank account etc. For IHT deemed to be automatic severance s.171 IHTA * Deceased's part in the property will form part of the deceased's estate for IHT purposes, but check if lifetime severance took place
Trust Policies	Expressly written on trust or implied s.11MWSA 1882 or s.71 Civil Partnership Act 2004 <i>A married woman may . . . effect a policy upon her own life or the life of her husband for her [own benefit]</i> *Provide proof of death and policy + proof of identity
Discretionary Pension Schemes	The pension fund rules normally provide that payment is made entirely at the discretion of the trustees, usually as per declared wishes of the deceased *Paid on proof of death + proof of identity
Statutory Nominations	Some registered Friendly Societies and Trade Unions allow statutory nominations to be made for less than £5,000 * It will form part of the deceased's estate for IHT purposes. To obtain the nominated property is to comply with the procedure set out in the rules concerned, which usually involves no more than producing an official copy of the death certificate and proof of identity
Donatio Mortis Causa	A gift made by a person (the donor) in contemplation of impending death, also known as a deathbed gift. When the donor dies, the subject-matter of the gift does not pass to the personal representative but to the person the deceased intended to benefit (the donee). To qualify as a donatio mortis causa: [Practical Law Company, Glossary] <ol style="list-style-type: none"> 1. The gift must be made by the donor <u>in contemplation of the donor's impending death</u>; 2. The gift must be <u>contingent on the donor dying</u>; 3. The donor must <u>part with the gift or deliver it</u> in some way to the donee; 4. The subject-matter of the gift must be <u>capable of being given away in this manner</u>.
Life Interest in Trust property	According to the terms of the trust
Gifts with reservation of benefit	A gift that is not fully given away because the person making the gift (the donor) keeps back some benefit for himself. For example, if a donor gives his home to his adult children (who live elsewhere) and continues to live there rent free. [Practical Law Company, Glossary] * It will form part of the deceased's estate for IHT purposes, unless proved to have been fully transferred.

3. Payment of debts

Solvent Estate

2. Undisposed by will
3. Residue
4. Property specifically given for payment of debts, but without indications of what to do with the surplus
5. Pecuniary legacy fund
6. Property specifically devised or bequeathed
7. Property expressly appointed under a general power of attorney
8. Other categories may also be available e.g. Donatio Mortis Causa

1. Secured Creditors

Abatement

– insufficient funds to pay / entitlement abates proportionally within the category

Marshalling

– right to compensation from residue

Insolvent Estate

2. Reasonable funeral and admin expenses
3. Preferred debts e.g. wages, salaries up to £800
4. Ordinary debts – all other including HMRC
5. Interest on debt
6. Deferred debts e.g. loan from deceased spouse

4. Distribution of the estate

PAYMENT OF LEGACIES

Specific legacies

- ✓ Bears costs of transfer unless the will provides otherwise;
- ✓ Entitled to interest

Pecuniary legacies

- ✓ Which part of the deceased's estate should be used for payments, unless indicated in the will;
- ✓ Obtain advice

Abatement

Proportionally within the category

Receipt

- ✓ Discharge by B, but if minor – solutions:
 - a. Hold on trust;
 - b. Appoint 2nd T;
 - c. Court order

Appropriation

- ✓ Pecuniary legatee may wish to have a particular asset transferred to him in or towards satisfaction of his entitlement.

ASCERTAINMENT OF RESIDUE

After payment of the **legacies**

After **Income tax** and **CGT**

After **IHT** recovery / Corrective accounts; Certificate of discharge

After **administrative expenses**: funeral, legal and other

After **remuneration**:

- a. Legacy by will – rebuttable presumption if legacy (not gift of residue) given to someone appointed as executor – it is conditional upon acceptance
- b. Charging clause
- c. Agreement with Bs
- d. Court order
- e. Solicitor [*Cradock vs. Piper*]

ESTATE ACCOUNT

Income

Capital

Distribution

Bs – approve / discharge

In case of refusal:

1. **Administrative action** for examination of accounts by the court
2. **Pay B's share to the court** under s.63 of the Trustees Act 1925

ASSENT

The act, by PR, of transferring a legacy, or all or part of the residuary estate, to a beneficiary.

[Practical Law Company, Glossary]

Subject to the following conditions:

1. The beneficiary is **entitled** to the legacy or share in the residuary estate;
2. The estate has **sufficient funds** to meet it;
3. The beneficiary is able to give a **valid receipt**.

It establishes the beneficiary's title to the asset in question

Written assent is not essential for other assets, but is desirable because, inter alia, it confirms the date on which the beneficiary becomes the owner

PR cannot withhold assent if reasonable agreement has been reached between the Bs

Insert conveyance that no previous assent has been made as to the asset in question

Estate And IHT

1. **s.171 IHTA; s.11MWPA 1882; s.63 of the Trustees Act 1925**

Cradock vs. Piper

2. **Legal Practice Companion: Administration or LPC Handbook**
3. **Foundations for the LPC (OUP): Post-grant practice**
4. **Legal Foundations (CLP): Probate Practice and Procedure**